

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.462 OF 2006
WITH
CIVIL APPLICATION NO.564 OF 2006**

Shri Jatashankar Dukhi Gaud. ..Appellant.

V/s.

The Municipal Corpn. of Gr.Mumbnai. ..Respondent.

Mr.P.K.Gautam for appellant.

Mr.R.A.Malandkar for respondent-BMC.

CORAM: A.M.KHANWILKAR, J

DATE : JULY 12, 2006.

P.C. :

1. Heard counsel for the parties.
2. As arguable questions are raised, admit.
3. Mr.Malandkar waives notice for respondent.
As short question is involved, appeal is taken up for
final disposal forthwith, by consent.
4. Heard. Perused the relevant documents on
record. I find no infirmity in the findings and
conclusion reached by the Court below that the suit
structure as it exists on the site is obviously
unauthorised structure and is not protected in that

form. This is so because, even if the case of the plaintiff was to be accepted as it is, it is seen that the plaintiff purchased the suit structure from one B.D.Yadav in 1992 and documents prepared between the said B.D.Yadav and plaintiff clearly specifies the measurement of the structure as it existed in 1992, which is mentioned as 7.5 sq.mtrs situated at Rajaram Gally, Bhagat Singh Nagar No.2, Goregaon (West) Bombay 400 062. It is not in dispute that the suit structure presently admeasures at 180 sq.ft., as is mentioned in the suit notice. According to the plaintiff, the same admeasures about 153 sq.ft. The fact remains that the original area of the structure has become double. The original area of structure which was purchased was 7.5.sq.mtrs., which is about 75 sq.ft., whereas the present structure according to the Corporation is above 180 sq.ft.; whereas according to the plaintiff it is around 153.sq.ft.

5. The counsel for the plaintiff was called upon to produce even a single official document, which has recognised the area of suit structure admeasuring at about 153 sq.ft in any of the government record prior to 1995. The learned counsel for the plaintiff was unable to produce any such document. If it is so, it necessarily follows that the area of the suit

structure has been increased after 1995. If it is so, it will have to be assumed that the extended portion constructed by the plaintiff cannot get any protection as per the extant policy. Indeed, the appellant would be entitled to claim protection in respect of the structure as it originally stood prior to 1995 at best to the extent of 7.5.sq.mtrs and not in excess thereof. The suit notice seeks to take action against entire structure. Only to this limited extent the appellant may succeed in the pending suit, if so, interim protection can be granted to the appellant/plaintiff only to the extent of structure admeasuring 7.5 sq.mtrs.which will be about 75 sq.ft. The plaintiff will have to take steps to identify the extended portion of the suit structure and remedy the same within two weeks from today, failing which, it will be open to the officials of the Corporation to take action on the basis of suit notice. However, if the appellant/-plaintiff takes corrective measure by restoring the area of suit structure to around 75 sq.ft. within two weeks from today, the Corporation shall not precipitate the matter any further till the disposal of the suit. All questions in the pending suit will have to be decided on merits. Appellant/plaintiff succeeds to the above extent. Protection will be

available to the appellant to the extent of 75 sq.ft of suit structure as there are documents on record to support the position of existence of said structure prior to 1995 and therefore, it will be protected structure as per the extant policy.

6. Counsel for the appellant/plaintiff has pressed into service notification issued by the State Government in exercise of power conferred under section 3 of the Maharashtra Slum Area(Improvement, Clearance and Redevelopment) Act, 1971 as per amendment dated 14th July, 1977 to contend that the Corporation has no power to proceed in respect of the suit structure, as the same is situated on private land, which has been declared as slum area. According to the appellant the notification enables the Corporation to initiate action only in respect of the structure standing on the lands in Greater Bombay belonging to Corporation. This notification nowhere prohibits the Corporation from taking any action against the unauthorised structures standing on private land, though declared as slum area. The learned counsel for the appellant is not in a position to point out any specific provision, which will remotely support the proposition, which is canvassed on behalf of the appellant in this behalf.

7. Accordingly this appeal partly succeeds to the limited extent, extending protection to the suit structure in conformity with the area which existed prior to 1995 to the extent of 7.5 sq.mtrs, equivalent around to 75 sq.ft.

8. Appeal as well as civil application disposed of on the above terms. No order as to cost.